IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 26361 of 2007(L)

AGAINST THE ORDER IN EP.260/1999 IN OS.755/1991 of PRINCIPAL SUB COURT,ERNAKULAM

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PETITIONER:

K.J.RAGHU, S/O. K.J.JINARAJAN,
AGED 45 YEARS,KUKKUVAYIL HOUSE, PULLEPPADY,
ERNAKUALAM, COCHIN-35.

BY ADV. SRI.ZAKEER HUSSAIN
SMT.K.A.SANJEETHA

RESPONDENTS:

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1. **M/S. NILAN ENTERPRISES,REP. BY ITS MANAGING PARTNER, N.A..VARGHESE, AGED 51 YEARS, S/O.NILAVARATHU ANTHA, NILAVARATHU HOUSE ,KOCHI-17.**

2. **M/S. HOME CLUB SERVICE, REP. BY ITS FORMER MANAGING PARTNER AGED ABOUT 46 YEARS, NOW RESIDING AT M-5 SUDHARSAN GARDENS, VELACHERY HIGH ROAD, GUINDY, MADRAS-600 031.**

3. **K.J.DILIP, BUSINESS MAN, AGED ABOUT 44, FORMER PARTNER OF M/S. HOME CLUB SERVICE, MAYI, R.N.H. ROAD, SASTHAMANGALAM, TRIVANDRUM-695 010.**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.26361 OF 2007

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Dated this the 5th day of September 2007

JUDGMENT

This writ petition is preferred by the judgment debtor against the order of arrest. The main contention is that an appeal was preferred and at that stage Rs.50,000/- was deposited and for the balance decree amount, bank guarantee was furnished. Learned counsel would submit that the bank guarantee amount had been released to the decree holder and therefore no amount is due to the decree holder in order to order arrest of the judgment debtor. In order to consider that point he has filed Exts.P6 and P7. If really the amount due to the decree holder has been released, then it may not be correct on the part of the court to issue warrant of arrest. Therefore, I direct the court below to consider Exts.P6 and P7 before actually issuing warrant of arrest. If the court is convinced that the decree amount has been wiped off or only a small balance amount is due, then it may permit the writ petitioner to pay the amount and avoid arrest. Since I am disposing of the matter at the admission stage itself, the court below shall give notice to the

decree holder before considering Exts.P6 and P7.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-